

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

ROSCOE T. CRAWLEY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07-0054
)	Judge Echols
)	
SAM BRAGG et al.,)	
)	
Defendants.)	

ORDER

This is a pro se action brought under 42 U.S.C. § 1983 which is pending before the Court on a Report and Recommendation (R & R) (Docket Entry No. 27) from the Magistrate Judge. In the R & R, the Magistrate Judge recommends partially granting Defendants' Motion to Dismiss (Docket Entry No. 10) and dismissing all claims against all Defendants, except for Plaintiff's claim against Defendants Sam Bragg ("Bragg") and Les Helton ("Helton") alleging Plaintiff was denied adequate medical care for a stomach ailment while housed at the Marshall County Jail. The R & R was issued on November 13, 2007, and the parties have filed no objections thereto, even though they were informed in the R & R that any objections needed to be filed within ten (10) days (Docket Entry No. 27 at 8).

Under Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1), the Court may accept, reject, or modify in whole or in part the findings or recommendations made by the Magistrate Judge.

Having carefully reviewed the entire record in this case, including the Amended Complaint (Docket Entry No. 2), the Motion to Dismiss (Docket Entry No. 10), the response thereto (Docket Entry No. 26), and the R & R, the Court determines that the Magistrate Judge correctly applied the law to the facts alleged in the Amended Complaint in making the recommendations set forth in the R & R.

Plaintiff purports to sue six Defendants, but only Defendants Bragg and Helton have been served. As it turns out, failure to serve the other Defendants is of no consequence because Plaintiff only states a cognizable claim against Defendants Bragg and Helton. Specifically, when the facts are construed in Plaintiff's favor, he states a cognizable claim that Defendant Bragg, the Jail Administrator, and Defendant Helton, the Marshall County Sheriff, were deliberately indifferent to Plaintiff's serious medical needs because for several months they ignored Plaintiff's complaints of stomach pain which caused him to spit-up blood. Moreover, at this stage of the litigation, those Defendants have not shown that they are entitled to qualified immunity.

Plaintiff's other allegations fail to state a claim upon which relief can be granted. This includes his claim that he was mistakenly given the wrong medicine by "Nurse Gene" for several weeks and was not told of the results of an x-ray of his arm. Such allegations do not show deliberate indifference. Further, Plaintiff's allegation that his picture was taken at the jail and

Plaintiff's allegation that his picture was taken at the jail and shown to witnesses fails to state a constitutional claim.

Accordingly, the Court hereby rules as follows:

(1) The Report and Recommendation (Docket Entry No. 27) is hereby ACCEPTED;

(2) Defendants' Motion to Dismiss (Docket Entry No. 10) is hereby GRANTED IN PART and DENIED IN PART, as follows:

(A) The Motion to Dismiss is GRANTED with respect to Plaintiff's claims against Defendants Rick Keller, Norman Crawford, "Nurse Gene," and Dr. Phelps. Those Defendants are hereby DISMISSED from this action.

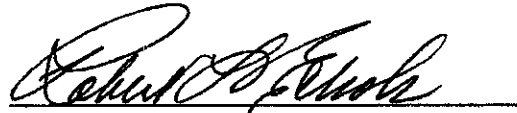
(B) The Motion to Dismiss is GRANTED with respect to Plaintiff's claims that he was not informed about the results of an x-ray and his mistaken receipt of wrongful medications. Those claims are hereby DISMISSED.

(C) The Motion to Dismiss is hereby DENIED with respect to Plaintiff's claim of inadequate medical care for his stomach ailment against Defendants Bragg and Heller; and

(3) "Plaintiff's Request for Evidentiary Hearing" (Docket Entry No. 32) is hereby DENIED as moot.

This case is hereby returned to the Magistrate Judge for further pretrial management in accordance with this Court's earlier referral (Docket Entry No. 3).

It is so ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", is written over a horizontal line.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE